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April 8, 2011

Inspector General

United States
Department of Defense



INVESTIGATION OF IMPROPER DISCLOSURE OF FOR OFFICIAL USE ONLY INFORMATION FROM THE COMPREHENSIVE REVIEW WORKING GROUP DRAFT REPORT

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INSPECTOR GENERAL
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MEMORANDUM FOR INSPECTOR GENERAL

SUBJECT: Investigation of Improper Disclosure of For Official Use Only Information
from the Comprehensive Review Working Group Draft Report

We recently completed an investigation in response to a request from the Secretary of Defense that we “investigate and determine the identity of the persons who were the unnamed sources” for the November 11, 2010, *Washington Post* front-page story, “Report: Little Risk to Lifting Gay Ban.” The story cited as its basis two people familiar with the DoD draft report on the impact of the repeal of “Don’t Ask, Don’t Tell.” As the draft Report was For Official Use Only (FOUO), release of information to the *Washington Post* would violate DoD information security requirements as set forth in Directive Type Memorandum 04-010, which prohibits unauthorized disclosure of FOUO information.

We conclude that the sources of the improper disclosure of FOUO information to the *Washington Post* cannot be determined based on a preponderance of evidence. We determined that the Secretary of Defense’s intent to limit the distribution of the draft Report and the dissemination of information contained in it was not always followed. Despite the Secretary of Defense’s direction that distribution of the draft Report on November 4, 2010, be limited to 41 “Eyes-Only” recipients, 60 additional individuals – to include five White House staff members – were given access to the draft Report or were briefed on its content prior to the publication of the *Washington Post* story.

We interviewed 96 of the 101 individuals with access to the draft Report or knowledge of its content. Each denied under oath that he or she disclosed information to the *Washington Post* or other media sources. We did not interview the White House staff members. Evidence otherwise accessible to us was insufficient to identify the *Washington Post*’s unnamed sources. Accordingly, we could not exclude the possibility that persons outside DoD provided information to the *Washington Post*.

We recommend that you provide the attached report to the Secretary of Defense.

Michael S. Child
Acting Deputy Inspector General
for Administrative Investigations

Attachment: As stated

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INVESTIGATION OF IMPROPER DISCLOSURE OF
FOR OFFICIAL USE ONLY INFORMATION
FROM THE COMPREHENSIVE REVIEW WORKING GROUP
DRAFT REPORT

I. INTRODUCTION AND SUMMARY

We initiated the investigation in response to a request from the Secretary of Defense that we “investigate and determine the identity of the persons who were the unnamed sources” for the November 11, 2010, *Washington Post* front-page story, “Report: Little Risk to Lifting Gay Ban.” The story cited as its basis two people familiar with the DoD draft report on the impact of the repeal of “Don’t Ask, Don’t Tell” (formally known as the “Report of the Comprehensive Review of the Issues Associated with a Repeal of ‘Don’t Ask, Don’t Tell’” and hereafter referred to as “draft Report”). The *Washington Post* published an on-line version of the same story the previous evening on November 10, 2010. As the draft Report was For Official Use Only (FOUO), release of information to the *Washington Post* would violate DoD information security requirements as set forth in Directive Type Memorandum 04-010, “Interim Information Security Guidance,” which prohibits unauthorized disclosure of FOUO information.

We determined that the Secretary of Defense’s intent to limit the distribution of the draft Report and the dissemination of information contained in it was not always followed. Despite the Secretary of Defense’s direction that distribution of the draft Report on November 4, 2010, be limited to 41 “Eyes-Only” recipients, 60 additional individuals – to include five White House staff – were given access to the draft Report or were briefed on its content prior to the publication of the *Washington Post* story on November 10, 2010. For instance, content from early versions of the draft Report’s executive summary was shared as early as July 2010 with a former news anchor and in October 2010 with a former staff director of the Senate Armed Services Committee.

We interviewed 96 of the 101 individuals with access to the draft Report or knowledge of its content.¹ Each denied under oath that he or she disclosed information to the *Washington Post* or other media sources. Evidence otherwise accessible to us was insufficient to identify the *Washington Post*’s unnamed sources. Moreover, evidence did not establish a direct connection between the November 4, 2010, distribution of the draft Report to DoD recipients and the information that appeared in the November 10, 2010, *Washington Post* article. As noted above, content had been shared with several non-DoD personnel, to include White House staff members. Accordingly, we could not exclude the possibility that persons outside DoD provided information to the *Washington Post*.

This report sets forth our findings and conclusions based on the preponderance of the evidence.

¹ We did not interview the five White House staff members.

II. BACKGROUND

In 1993, Congress passed Title 10, United States Code, Section 654, (10 U.S.C. §654) "Policy Concerning Homosexuality in the Armed Forces," which stated that "the presence in the Armed Forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability." The law and subsequent DoD implementation policies set forth three forms of conduct that required separation of a Service member: homosexual acts, statements acknowledging homosexuality or bisexuality, or same-sex marriage. However, the law permitted homosexuals to serve if, among other things, they did not make known their sexual orientation. The law is commonly referred to as "Don't Ask, Don't Tell." During his State of the Union address to Congress on January 27, 2010, President Barack Obama called on Congress to repeal the law. On March 2, 2010, the Secretary of Defense appointed Mr. Jeh C. Johnson, General Counsel, DoD, and General (GEN) Carter F. Ham, U.S. Army, Commander, U.S. Army Europe, as co-chairs of a Comprehensive Review Working Group (CRWG) to "assess and consider impacts, if any, a change in the law would have on military readiness, military effectiveness and unit cohesion, and how to best manage such impacts during implementation." Further, the Secretary of Defense requested that the effort be carried out in a "professional, thorough, and dispassionate manner."

The Secretary of Defense directed the CRWG to "systematically engage the force" about potential impacts of a repeal of "Don't Ask, Don't Tell." Accordingly, the CRWG retained the services of a social science research corporation to solicit web-based survey responses. This engagement included a survey distributed to 399,856 active duty and reserve component Service members on July 7, 2010, and responses to the survey were received through August 15, 2010, for inclusion in the draft Report. In addition, 150,186 surveys were sent to Service members' spouses on August 13, 2010, and responses to the survey were received through September 27, 2010, for inclusion in the draft Report. The CRWG received 115,052 responses from Service members and 44,266 responses from spouses. Additionally, the CRWG included in its draft Report feedback from 95 "Information Exchange Forums," similar to town hall meetings, which were attended by approximately 24,000 Service members at 51 military installations from April 6, 2010, to September 30, 2010. The CRWG also analyzed 72,384 "online inbox" submissions from Service members desiring anonymity.

The writing of the draft Report began in the July 2010 timeframe. On November 4, 2010, the CRWG began delivery of the draft Report to the Secretaries of the Military Departments and Service Chiefs, as well as designated Service representatives, for their review and comment. By direction of the Secretary of Defense, these copies delivered on November 4, 2010, were "Eyes-Only, limited-distribution documents." On November 10, 2010, the *Washington Post* published an on-line article entitled, "Sources: Pentagon group finds there is minimal risk to lifting gay ban during war." The article contained FOUO information presented in the CRWG draft Report, which had not been authorized for public release.² The article was published the following morning on the front page of the November 11, 2010, print edition of the *Washington Post*. On

² The final Report was officially released to the public and media on November 30, 2010.

November 12, 2010, DoD Public Affairs published a response stating that the Secretary of Defense "strongly condemns the unauthorized release of information related to this report and has directed an investigation to establish who communicated with the *Washington Post*..."

By memorandum dated November 17, 2010, the Secretary of Defense requested that this Office investigate the unauthorized release to the *Washington Post* of FOUO information contained in the draft Report.

III. SCOPE

We interviewed 116 military members, DoD civilian employees, contractor personnel, and non-DoD civilians with knowledge of the matters under investigation. Included in the 116 witnesses was every person, except as noted below, whom we determined may have received a copy of the draft Report from the CRWG, had access to the draft Report, or been briefed on the contents of the draft Report prior to the November 10, 2010, *Washington Post* article. Witnesses included the Deputy Secretary of Defense, the Secretaries of the Military Departments, the five Service Chiefs, the CRWG co-chairs, the Chairman and Vice Chairman of the Joint Chiefs of Staff, and the Chief of the National Guard Bureau. However, we did not interview White House officials who received briefings regarding the content of the draft Report's executive summary and survey statistics. (Appendix A is a list of all interviews conducted).

Additionally, we reviewed approximately 55,000 e-mails and 1,500 phone and wireless handheld records on 11 persons of interest whom, based on early indications from evidence regarding means, motive, and opportunity, we considered the most likely to be the source(s) of the improper disclosure.³ Further, we reviewed Secretary of Defense and CRWG policies, memoranda, and internal e-mail communications related to distribution and restricted access to the draft Report. We also reviewed applicable standards and regulations.

We note that documents other than the draft Report were generated and distributed in the course of the CRWG's effort. Examples of such additional documents include the 115 page Support Plan for Implementation, supporting documentation from the social science research corporation, and a study from the RAND Corporation, "Sexual Orientation and the U.S. Military Personnel Policy." However, the additional documents did not contain information germane to the unauthorized disclosure of FOUO information. Accordingly, for the purpose of this investigation, we focused on the handling of the information contained in the draft Report.

IV. FINDINGS AND ANALYSIS

Who improperly released FOUO information which appeared in the *Washington Post* on November 10-11, 2010?

³ We were unable to review all e-mails for one person of interest because certain back-up tapes were destroyed due to a non-related data spill, which occurs when classified information is sent or stored on an unclassified network and media.

Standards**Directive Type Memorandum 04-010, "Interim Information Security Guidance," dated April 16, 2004**

This standard provides interim guidance on changes to DoD Regulation 5200.1, "Information Security Program," dated January 1997. DTM 04-010 states that "no person may have access to information designated as FOUO unless that person has been determined to have a valid need for such access in connection with the accomplishment of a lawful and authorized Government purpose." Further, the standard mandates that "appropriate administrative action shall be taken to fix responsibility for unauthorized disclosure of FOUO whenever feasible, and appropriate disciplinary action shall be taken against those responsible."

Uniform Code of Military Justice, Article 92, "Failure to Obey Order or Regulation"

This standard states that any person subject to the Uniform Code of Military Justice who violates or fails to obey any lawful general order or regulation; having knowledge of any other lawful order issued by a member of the Armed Forces, which it is his duty to obey, fails to obey the order; or is derelict in the performance of his duties; shall be punished as a court-martial may direct.

Facts

By four memoranda dated April 5, 2010, CRWG co-chairs GEN Ham and Mr. Johnson established four teams composed of 68 DoD officials: Policy; Survey; Legislative, Regulatory and Legal; and Education and Training. The teams were tasked to determine how a potential repeal of "Don't Ask, Don't Tell" may impact six areas within the military: (1) readiness, (2) effectiveness, (3) unit cohesion, (4) recruiting, (5) retention, and (6) family readiness. The Secretary of Defense directed that the CRWG submit its Report by December 1, 2010. The four teams within the CRWG had access to compartmentalized information related to the issues and Services under their responsibility. However, as a general matter, the teams did not have access to the entire draft Report unless specifically authorized by the Secretary of Defense or other responsible officials.

We gathered all available information regarding the creation and dissemination of the draft Report. The facts are presented below and grouped by issues in a generally chronological order.

Access to Information Included in the Draft Report

The CRWG Assistant Chief of Staff established access controls regarding the ability to view and edit the draft Report. By direction of Major General (Maj Gen) Greg Biscone, U.S. Air Force, CRWG Chief of Staff, the Assistant Chief of Staff coordinated with the Washington Headquarters Services on March 4, 2010, for the creation of a centralized, password-protected collaboration space, known as SharePoint. E-mail evidence confirmed that on April 30, 2010,

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the CRWG began to establish a SharePoint filing system that restricted access to the report library used for storage, sharing, and editing of the draft Report among 15 specified CRWG users and four system administrators. The Assistant Chief of Staff explained that the SharePoint site was intended to satisfy Maj Gen Biscone's intent to limit access to the draft Report "from the very beginning" of the drafting process.

In addition to the controlled SharePoint access to the electronic version of the draft Report, the CRWG required certain personnel to sign a two-part non-disclosure agreement that prohibited unauthorized disclosure of the survey data and the draft Report outside of official duties. The non-disclosure agreement forms were destroyed per routine CRWG administrative processes prior to our request for the documents. Accordingly, documentary evidence was insufficient to establish which specific personnel signed the non-disclosure agreement and CRWG officials were unable to identify everyone who signed the agreement. However, testimony confirmed that some CRWG members who did not sign the non-disclosure agreement had verbally committed to non-disclosure with Mr. Johnson. Additionally, each Service designated personnel to analyze its service-specific survey data; such personnel were typically required to sign non-disclosure agreements.

A CRWG-assigned attorney developed document control warning language at the early stages of draft Report writing that was included at the footer of each page (emphasis in the original).

FOUO: This communication and any attachments are protected by the deliberative process privilege or another privilege recognized under the law. Do not distribute, forward, or retransmit outside the Comprehensive Review Working Group (CRWG) without the prior approval of the drafter or the CRWG co-chairs.

On or about July 4, 2010, three days before Service members received the CRWG "Don't Ask, Don't Tell" survey, Mr. Johnson read portions of "an early draft" of the executive summary of the draft Report to a former news anchor, a close personal friend visiting Mr. Johnson's home. As "a personal favor" the news anchor provided advice regarding syntax, sentence structure, and suggestions for persuasive writing. Although the former news anchor could not recall all of the portions Mr. Johnson read aloud, the former news anchor testified, "I was very pleased that finally the United States was getting around to this idea [repeal of 'Don't Ask, Don't Tell,'], and I was struck by how many members of the United States Armed Services thought this was just fine." We asked the former news anchor how he/she came to this conclusion regarding repeal of "Don't Ask, Don't Tell." The former news anchor replied that the information was in "one of the sentences I had a problem with in terms of sentence structure." We identified no evidence that the Secretary of Defense approved the sharing of information with this former news anchor.

By memorandum dated October 7, 2010, Mr. Johnson provided the Deputy Secretary of Defense with a read-ahead for a scheduled October 8, 2010, update on CRWG efforts. The memorandum cited several statistics regarding "Don't Ask, Don't Tell" repeal impact on Service members as derived from CRWG survey results and summarized, in part, that

53.6 percent of Service members said repeal would have a neutral impact...16.7 percent said repeal would have a positive impact. In other words, just over 70 percent of Service members believe repeal either has a neutral or positive impact on unit cohesion, readiness, effectiveness and morale...

The memorandum concluded "Overall, it is the sense of both of us [CRWG co-chairs] that in the course of the review, the military community is becoming more accustomed to the idea of repeal."

Throughout October 2010, the CRWG co-chairs briefed each Secretary of a Military Department and Service Chief on the Service member survey responses and other data collected specific to their respective Services. Testimony indicated that the co-chairs did not provide or leave documents with Service officials at these meetings. However, on at least one occasion, GEN Ham briefed "all of the Service Chiefs and the combatant commanders" together regarding multi-Service survey and other data.

On October 14, 2010, the health care policy editor for the Center for American Progress sent an e-mail to a CRWG member, subject "Study being leaked?" The policy editor asked the CRWG member, "Is the DADT ["Don't Ask, Don't Tell"] study being leaked?" The e-mail referenced a link to an October 14, 2010, *Los Angeles Times* news article, "Legal Scholars Debate Judge's Ruling on 'Don't Ask, Don't Tell,'" which stated in part,

The Pentagon task force charged with examining the issue is 'well along' in formulating recommendations, and the ruling [California 9th Circuit ruling] is not expected to affect its work, another senior military officer said. The task force found deep resistance to the idea of repealing the law in some elements of the armed services, especially within the combat units, an officer familiar with the findings said. But the surveys also have found segments of the military who were not overly worried about allowing gays and lesbians to serve, the officer said.

The CRWG member responded by e-mail dated October 14, 2010, "We are not aware of any leaks out of the Working Group, but I've brought this to Jeh's [Johnson] attention as well as our Assistant Secretary for Public Affairs [Mr. Douglas Wilson]."

By e-mail dated October 23, 2010, GEN Ham advised Mr. Johnson that "leaks are beginning. A trusted friend informed me that she was asked yesterday by a reporter if it was true that 70 percent of the survey respondents indicated that repeal of the law would not be a big idea." Mr. Johnson replied by e-mail, "Do you think it is a DoD source? SecDef mentioned that number [70 percent] to POTUS [President of the United States] this past week . . ." We interviewed GEN Ham's "trusted friend" who confirmed communicating with GEN Ham but could not recall the identity of the reporter who inquired concerning leaked "Don't Ask, Don't Tell" survey statistics.

On October 28, 2010, "NBC Nightly News" aired a story revealing that the CRWG survey results showed the majority of Service members did not believe repeal of "Don't Ask, Don't Tell" would be disruptive. NBC reported,

Early data tonight from the survey of those in uniform asking how they would react to serving alongside openly gay men and women in the military...[NBC] has learned from military sources that the survey of U.S. troops find the majority would either not object to serving alongside openly gay troops or would raise any concerns directly with their gay peers.

A witness familiar with the development and dissemination of the draft Report testified that the information reported by NBC was sourced "not necessarily just from the [draft] Report. It had been out there some other way, somebody else who had been familiar with survey information, and what was going on at that time..." The witness testified the CRWG leadership was "surprised" that someone had that information, however, the witness added that each of the Services were permitted to review the data thus far collected, and that the CRWG had been "going around to the Service Secretaries and the Chiefs...to brief them on a sense of...our analysis to the survey."

Mr. Ed O'Keefe, a *Washington Post* reporter, attempted to confirm the NBC story by contacting DoD Public Affairs personnel, who in turn forwarded Mr. O'Keefe's request to CRWG personnel. GEN Ham sent a message to CRWG members by e-mail dated October 28, 2010, along with Mr. O'Keefe's request, advising, "Here we go...I am sure this is just the beginning. Best, I think, to just not comment." The on-line edition of the *Washington Post* published a column by Mr. O'Keefe on October 28, 2010: "'Don't ask' Survey: Majority OK Serving with Openly Gay Troops, Sources Say." The column states, in part, that a DoD survey "finds that a majority of [Service members] would not object to serving alongside openly gay troops, according to multiple people familiar with the findings."

On October 29, 2010, Mr. Johnson, in his own words, "took the liberty of privately showing the executive summary" to retired Marine Corps Major General Arnold Punaro, Chief Executive Officer of the Punaro Group. Mr. Punaro visited with Mr. Johnson and his principal assistant in Mr. Johnson's office and reviewed the executive summary of the draft Report for approximately 30 minutes. Mr. Punaro testified that he did not consider Mr. Johnson's request unusual because Mr. Punaro had "tremendous background and expertise in this area," having served as the staff director for the Senate Armed Services Committee during the Clinton Administration's "Don't Ask, Don't Tell" period of activity. We identified no evidence that the Secretary of Defense approved the disclosure of this information to Mr. Punaro.

On Saturday, October 30, 2010, Mr. Johnson held a meeting with specific members of the CRWG and other key representatives from the DoD and Services to review the entire draft Report and provide input and reaction for his consideration.⁴ The meeting invitation listed 22 individuals as "required attendees," but testimony established that only 15 to 20 people attended the meeting, and that it lasted the entire day.

⁴ GEN Ham was not able to attend this meeting.

Plan to Disseminate Draft Report

Maj Gen Biscone directed his Assistant Chief of Staff to develop a plan to ensure the limited and controlled distribution of the draft Report to authorized recipients. The CRWG Assistant Chief of Staff was also responsible for the distribution and inventory control plan to account for every printed copy of the draft Report. The Assistant Chief of Staff testified that they maintained control of the printed draft Report through the use of a spreadsheet which recorded each transmittal of CRWG documents.

On November 1, 2010, Maj Gen Biscone discussed the draft Report review and comment plan with the Joint Chiefs in the Joint Chiefs of Staff Conference Room. On November 3, 2010, the draft Report was prepared and delivered in CD-ROM format for printing at the Defense Logistics Agency Document Services in the Pentagon. At about 1:00 pm, November 4, 2010, CRWG personnel retrieved 70 copies of the draft report and the CD-ROM from Defense Logistics Agency Document Services. The CRWG couriers disseminated copies of the draft Report to the 41 intended recipients identified on the "Access List" attached to a memorandum dated November 4, 2010, signed by the co-chairs and addressed to the Secretaries of the Military Departments and Service Chiefs. Documentary evidence established that an additional 14 copies were provided to other recipients not on the "Access List," but whom CRWG staff determined had an official "need-to-know" requirement, such as the Chairman of the Joint Chiefs of Staff, the Deputy Secretary of Defense, and CRWG personnel involved in the writing of the draft Report.⁵ The remaining 13 copies were securely retained by the CRWG for use by their writers, editors, and others.⁶ (See Appendix B for a list of the 55 recipients).

The draft Report consisted of a 227 page assessment of the impact a repeal of "Don't Ask, Don't Tell" would have on military mission effectiveness, readiness, unit cohesion, recruitment, retention, and family readiness. Additionally, the CRWG developed a separate 115 page "Support Plan for Implementation" designed to assist the Services in developing required training materials based on the anticipation that repeal would occur.

Copies of the draft Report were not sequentially numbered, however, the CRWG accounted for each copy on a spreadsheet with three categories: name of the courier delivering the draft Report, name of the recipient, and name of the person designated to have access to the draft Report. In most cases, a copy of the draft Report and Implementation Plan were each separately placed and sealed in brown envelopes and the envelopes bound together with a large rubber band. The top envelope had an affixed label printed in 25 font red text with the words "EYES ONLY" and the name of the recipient in 18 font red text, all underlined. In addition to the draft Report and Implementation Plan, the five Service Chiefs and other select individuals

⁵ Mr. Johnson and Mr. Robert Rangel, the Special Assistant to the Secretary of Defense, received two copies each of the draft Report resulting in a total of 57 copies delivered.

⁶ Two of those 13 copies were originally intended to be delivered to the Directors of the U.S. Army and U.S. Air Force National Guard. However, Mr. Johnson removed them from original distribution.

received supporting documents developed by the social science research corporation used in compiling data for the draft Report.

Prior to dissemination of the draft Report, Maj Gen Biscone personally briefed the delivery process and "Eyes-Only" nature of the review to CRWG couriers designated to deliver the draft Report and distribution began on November 4, 2010.

Dissemination of Draft Report

As previously presented, at the time of hand-delivery, a memorandum dated November 4, 2010, signed by the co-chairs was provided to each of the 41 intended recipients of the draft Report. The memorandum included an "Access List" of the 41 recipients who were authorized to read the draft Report. It stated, in part,

By direction of the Secretary of the Defense, these are Eyes-Only, limited-distribution documents. We provided a copy of the draft report and support plan for implementation to each of the designated Service representatives on the attached access list, and will recover them following the review period. Do not reproduce or distribute these documents beyond those designated Service representatives.⁷

The memorandum further requested the recipients to provide comments separately, via memorandum, to Maj Gen Biscone not later than November 18, 2010.

Every copy was hand-delivered to the intended recipient, or where impractical, to the recipient's front office staff who accepted receipt on behalf of the "Eyes-Only" recipient. In addition, deliveries were to be recorded with hand-receipts indicating the recipient, the courier, and the delivery date. While there was no designated script prepared for the couriers' use, we found that the couriers provided instructions to the front office personnel receiving the report. Those instructions included words to the effect that the draft Report was "Eyes-Only" for the named recipient and that no one but the named recipient was to read it. However, we note that in some instances, the person who accepted delivery of the draft Report either disregarded the courier's instructions or failed to ensure the instructions were followed by other personnel within the office. The draft Report was not delivered electronically during this process.

We obtained testimony from one colonel, who had worked CRWG issues for a recipient for several months, that he and others like him assumed they should have access because "we would be the ones that would actually write the first drafts [for the Secretaries/Service Chiefs]. Plus, we had been involved in the analysis of the survey results all along." Another witness testified that Maj Gen Biscone restricted access to the draft Report only by office, not name, that is, the draft Report was "not supposed to leave the immediate offices" of the intended recipient. In some of those cases, individuals availed themselves of the draft Report, or were given access

⁷ We received no evidence that the additional 14 recipients received the memorandum with their copy of the draft Report.

to it by the intended recipient in his/her office or conference room, despite knowledge of the CRWG protocols limiting access to only the specific by-name principals.

Testimony from some senior officials confirmed that they expected their executive officers or other assistants to routinely review information designated for their "Eyes-Only." For instance, Mr. Robert Work, Under Secretary of the Navy, told us,

My military assistant, signed for it. He broke the seal – normally he does break, I mean, break the seal on anything – took a quick look at what it was. And he made a copy – he made a copy for himself of the executive summary only.

Under Secretary Work further testified, "It was my fault. I did not tell my [military assistant] before the thing was delivered that it was for my Eyes-Only and they should not open it." He directed his military assistant to destroy the copy he made of the executive summary, and the military assistant did so.

Other witnesses testified that the "Eyes-Only" guidance was strictly maintained. The Director of the Commander's Action Group for the Chairman, Joint Chiefs of Staff, testified that once Admiral (ADM) Michael Mullen received his copy of the draft Report, the Director expected ADM Mullen would share it with his staff, as was routine with other documents provided to the Chairman.

I expected I would be able to read it in order to help him prepare his military advice and reaction to it. [ADM Mullen] had a copy of the report in a locked bag and he kept the key. I mean this is – this is unprecedented. I handle for him all kinds of sensitive correspondence all the time, all kinds of levels of classified information. He has never, ever locked something in a bag and kept the key by himself, and that is what he did until we received clearance from the SecDef's office that others were allowed to view it.

Access to Draft Report Spreads Beyond Initial "Eyes-Only" Recipients

From November 4 through 8, 2010, Maj Gen Biscone and others on his staff authorized an additional 16 CRWG staff members as "authorized readers" of the draft Report, primarily to assist with the writing, editing, and production aspects of the final Report.⁸ (See Appendix C for a list of the 16 additional CRWG-internal authorized readers).

On November 4, 2010, Mr. Johnson approved a request from Mr. Wilson, Assistant Secretary of Defense for Public Affairs, to read the draft Report. Mr. Wilson, accompanied by his primary "Don't Ask, Don't Tell" spokesperson, reported to Mr. Johnson's conference room, where Mr. Johnson permitted both to read the draft Report. Mr. Wilson and the spokesperson

⁸ "Authorized readers" had access to the draft Report but were not assigned their own copy.

only had time to read the executive summary. We identified no evidence that the Secretary of Defense authorized Mr. Wilson or the spokesperson to read any portion of the draft Report.

On November 4, 2010, CRWG officials and other senior officials received requests to expand the pool of authorized readers. The CRWG Deputy Chief of Staff sent an e-mail to CRWG Team Leaders, dated November 4, 2010, "reiterating the guidance" that the draft Report was for "principals' 'Eyes-Only'." The e-mail continued, "Mr. Johnson and GEN Ham have asked us to hold the line on this. The Services are requested to use only their CRWG team members (who were on the approved access list and received the materials today) to complete Service reviews."

In one such request, GEN George Casey, Chief of Staff, U.S. Army, sent an e-mail to ADM Mullen, regarding the November 4, 2010, memorandum included in his copy of the draft Report. GEN Casey stated, "[ADM Mullen], as I read this it is unacceptable. CRWG decides who in [the] Army gets to review [the draft] Report? I have a plan for staff review that will preserve control and help [the Secretary of the Army] and I shape our military advice. Cannot live with this." ADM Mullen forwarded GEN Casey's request to GEN Ham, who replied to ADM Mullen on November 5, 2010, stating,

My view is that when we discussed [draft Report dissemination] with [the] SecDef, he seemed quite clear about limiting distribution to those we listed to him. Other Services have also asked to allow others to review the draft report, but [Mr. Johnson] and I have said no. Our experience, as you know, has been each time information has been made available to Services, that information has appeared in press reporting.... I think we have to limit access to this draft or we will be fighting this publically even before we have provided the final report to you and the SecDef.

Maj Gen Biscone testified that if senior leaders needed someone to help them craft their response, the leaders would make those requests known and that they were typically "given the opportunity to handle the documents" prior to the November 10, 2010, *Washington Post* article. However, he added, "Once the leak occurred, [the] SecDef said, 'Only I will approve those people.' So we pulled back and had the [SecDef] be the final approving authority or at least the [SecDef's] front office."

An e-mail exchange from Mr. Charles Blanchard, Air Force General Counsel to Mr. Johnson, on November 4, 2010, illustrated that not all requests for additional readers were generated by Secretaries of the Military Departments or Service Chiefs. Mr. Blanchard, an "Eyes-Only" recipient of the draft Report, requested Mr. Johnson to authorize an additional reader, however, Mr. Johnson replied, "No. Sorry. [The draft Report] must be limited to the named recipient only. I have to be really strict about that." One-hour later, Mr. Daniel Ginsberg, Assistant Secretary of the Air Force for Manpower and Reserve Affairs, and a member of the CRWG, e-mailed Mr. Johnson to request "an appeal" to enlarge the group to three Air Force personnel. Mr. Ginsberg stated, in part,

We had checked with Maj Gen Biscone, and he said there would be no problem in extending the already very small circle just a smidgen wider.... May we proceed with this plan as coordinated with the CRWG?

Mr. Johnson forwarded Mr. Ginsberg's request to Mr. Robert Rangel, the Special Assistant to the Secretary of Defense, on November 4, 2010, stating, "Robert, it starts. I have held it to 9 people per Service, plus 4 more for the Marines.⁹ I am trying to hold the line, and would like to say SecDef supports that." Mr. Rangel replied, in part, "I think he [the Secretary of Defense] would." Mr. Johnson responded, in part, "This can get out of control fast if I let it. On the other hand, I do not want grumpy Service comments. I suspect many will just share without asking my permission."

On November 5, 2010, Mr. Johnson sent an e-mail to GEN Ham and Mr. Rangel, suggesting, "We let [the Services] pick which 9, but continue to limit to the 9." Later on November 5, 2010, Mr. Rangel sent an e-mail to Mr. Johnson and GEN Ham.

SecDef directs the following: No additional copies provided. If the Services want to grow the number of officials with access, they need to use [non-disclosure agreements] for all involved [and] submit for [SecDef] approval a list of additional officials (beyond the 9) with a brief rationale why.

GEN Ham forwarded the Secretary of Defense guidance at 12:13pm, November 5, 2010, to the Service Chiefs. By e-mail dated 2:43pm, November 5, 2010, the CRWG Deputy Chief of Staff forwarded the Secretary of Defense-specific direction to the CRWG Team Leads, asking them to reiterate to all Service reviewers the Secretary of Defense "Eyes-Only" requirement and provided guidance should they desire to request additional Service reviewers. However, Maj Gen Biscone stated he did not "directly contact any Service Secretary or Service Secretariat member not on the CRWG [and] also did not directly contact the Service [Judge Advocates General] or Service Senior Enlisted leaders" regarding the Secretary of Defense direction of November 5, 2010.

On November 5, 2010, Lieutenant General (LTG) Thomas Bostick, a CRWG Policy Team Leader, forwarded to Mr. Johnson and GEN Ham via e-mail GEN Casey's request for five additional readers. We confirmed that the Secretary of Defense approved LTG Bostick's request by e-mail dated November 6, 2010.

CRWG documents established that 10 readers who were not CRWG members were also granted authorized reader status by the CRWG Deputy Chief of Staff on November 4, 2010, and

⁹ Those nine people included the Secretary of the Military Department, Department Under Secretary, Service Chief, Service Vice-Chief, Department Assistant Secretary for Manpower and Reserve Affairs, Department Deputy Chief of Staff for Personnel, Department General Counsel, Service Judge Advocate General, and the Service Senior Enlisted Leader. Contrary to Mr. Johnson's e-mail, five U.S. Marine Corps personnel were included in the original distribution, rather than four: The Commandant, Assistant Commandant, Sergeant Major, Deputy Commandant for Manpower and Reserve Affairs, and the Staff Judge Advocate to the Commandant.

November 8, 2010. Evidence showed that five of these readers -- which were the ones LTG Bostick sought authorization as noted above -- had also received specific approval from the Secretary of Defense to have access to the draft Report on November 6, 2010. However, we found no evidence that the remaining five readers were granted access by the Secretary of Defense. (See Appendix D for a list of the 10 non-CRWG authorized readers).

As thus far presented, our investigation revealed that there were 55 "Eyes-Only" recipients who received a personal copy of the draft Report, 16 CRWG-internal personnel were approved as authorized readers, and another 10 non-CRWG personnel were approved as authorized readers. These individuals were authorized access to the report by the Secretary of Defense or other responsible officials, whether or not such other officials had explicit authority to grant such access. Further, prior to November 10, 2010, 15 individuals not identified as an "Eyes-Only" recipient or an authorized reader also read, or had read to them, content from the draft Report. These 15 individuals did not have authorization from the Secretary of Defense to do so. (See Appendix E for a list of 15 individuals not identified as "Eyes-Only" or authorized readers).

On November 9, 2010, Mr. Johnson and Mr. Rangel were invited, with Secretary of Defense approval, to attend a meeting at the White House regarding issues related to "Don't Ask, Don't Tell." Participants at the meeting included Mr. Denis McDonough, Deputy National Security Advisor; Mr. Jim Messina, Deputy White House Chief of Staff; Mr. Robert Bauer, White House Counsel; Ms. Kathy Ruemmler, Deputy White House Counsel; and Mr. Donald Verrilli, Jr., Associate White House Counsel. Mr. Johnson testified that he briefed them on the substance of the draft Report. Mr. Rangel testified that the meeting "was a broader discussion than just the [draft] Report," and included topics related to the prospects for legislative action on repeal of "Don't Ask, Don't Tell," and other broader discussion issues related to the overall CRWG process.

On the morning of November 10, 2010, Mr. Johnson permitted Mr. Wilson to spend approximately one hour to continue reading the draft Report. Mr. Johnson testified that Mr. Wilson "read the whole thing" and took notes. We identified no evidence that the Secretary of Defense authorized Mr. Wilson to read any portion of the draft Report. Mr. Johnson further testified that "as the chair of the working group and the author of the report, I felt I had a fair amount of discretion myself" to share the draft Report with Mr. Wilson "in the process of preparing this thing for a public rollout."

Washington Post Publication of Draft Report Content

From September 12, 2010, through November 9, 2010, Mr. O'Keefe published about 30 *Washington Post* articles, mainly through his column, "The Federal Eye," on the topic of "Don't Ask, Don't Tell." His column on November 8, 2010, "Are Hopes Dimming on Repeal of 'Don't Ask, Don't Tell?'" reported that "Efforts to repeal the military's 'Don't Ask, Don't Tell' policy this year could be in jeopardy as top senators are discussing removing language repealing the ban from the annual Defense authorization bill." We obtained testimony indicating that although Mr. O'Keefe was not customarily assigned as a *Washington Post* reporter covering issues at the Pentagon, he was considered the lead *Washington Post* reporter on issues related to "Don't Ask, Don't Tell."

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By e-mail dated November 9, 2010, 12:19pm, Mr. Greg Jaffe, a lead *Washington Post* Pentagon reporter, wrote to GEN Ham, in part,

We recently spoke at length with someone who has read the 250 page ["Don't Ask, Don't Tell"] report and are preparing a story. The source reached out to us because he was concerned the process was being politicized. I would like to run what were (sic) told past you to make sure we are not getting spun. Our source has read the document and we feel like he is a good source. But he is also not a totally disinterested party and we would like to talk to someone – like you – who does not have a dog in the fight.

Within minutes of this initial e-mail, Mr. Jaffe sent virtually identical e-mails to the Special Assistant for Public Affairs to the Chairman, Joint Chiefs of Staff; the Acting Deputy Assistant Secretary of Defense for Media Operations; GEN Peter Chiarelli, U.S. Army, Vice Chief of Staff; Mr. Geoff Morrell, Pentagon Press Secretary and Deputy Assistant Secretary of Defense for Public Affairs; and Mr. Wilson. Some of these individuals replied to Mr. Jaffe, but only to state, in essence, "no comment."

Later, on November 9, 2010, at 2:49pm, Mr. Wilson sent an e-mail to Mr. Rangel, GEN Ham, and Mr. Johnson, advising that he had spoken with Mr. Jaffe, and that, in part, "[Mr. Jaffe's] preference is to write for tomorrow [November 10] because, in his words, 'my source is impatient and if he thinks we are dragging our feet, he will go elsewhere.'" However, *Washington Post* editors were unwilling to run the story on November 9, 2010, without more than one source. Mr. Jaffe wrote to an OSD Public Affairs officer by e-mail dated November 9, 2010, at 6:13pm,

The source is not mine, but one of my colleagues. To be honest I do not even know who it is. After much deliberation the bosses want greater reassurance that we are not being spun, which means more than one source.

E-mail and testimony established that Mr. O'Keefe was the primary writer of the article and, further, was the reporter in direct dialogue with the primary source of the improperly released FOUO information from the CRWG draft Report.

By e-mail dated November 9, 2010, at 10:00pm, Mr. Denis McDonough, Deputy National Security Advisor, asked Mr. Wilson for an update on the status of the leak to the *Washington Post*. Mr. Wilson replied by e-mail dated November 10, 2010, 4:15am, stating that the *Washington Post* was holding off publication pending corroboration with a second source.

On November 10, 2010, Mr. Wilson notified Mr. Rangel and Mr. Johnson by e-mail at 2:37pm, that "[The *Washington Post*] still only [has] one source, but [Mr. Jaffe] said the source provided them with greater detail." Within 50 minutes, [REDACTED], notified Mr. Wilson, Mr. Rangel, and Mr. Johnson by e-mail, "[Mr. Jaffe] tells me that they found a second source." Later, the collaborative effort of Mr. O'Keefe and Mr. Jaffe appeared in the online version of the *Washington Post* at 9:50 pm,

November 10, 2010, entitled, "Sources: Pentagon Group Finds There is Minimal Risk to Lifting Gay Ban During War," which stated, in part,

A Pentagon study group has concluded that the military can lift the ban on gays serving openly in uniform with only minimal and isolated incidents of risk to the current war efforts, according to two people familiar with a draft of the report.... More than 70 percent of respondents to a survey sent to active-duty and reserve troops over the summer said the effect of repealing the 'don't ask, don't tell' policy would be positive, mixed or nonexistent, said two sources familiar with the document. The survey results led the report's authors to conclude that objections to openly gay colleagues would drop once troops were able to live and serve alongside them.

Elsewhere within the article, Mr. O'Keefe and Mr. Jaffe described their primary source as one "who has read the report in full (and) felt compelled to share information out of concern that groups opposed to ending the ban would mischaracterize the findings." The two reporters described their other source as someone "who was briefed on the report but had not read it." We obtained testimonial evidence that the only formal briefings held by CRWG personnel were to the Secretary of Defense on October 8, 2010, the Secretaries of the Military Departments and Service Chiefs throughout October 2010, and White House staff members on November 9, 2010.

Mr. O'Keefe and Mr. Jaffe further reported that their sources disclosed that "about 40 percent of the Marine Corps is concerned about lifting the ban." Among the recommendations cited in the draft Report, the reporters noted that the draft Report "urges an end to the military ban on sodomy between consenting adults," and that the military "must abide by the federal Defense of Marriage Act, which does not recognize same-sex marriage. Objections by troops who do not want to room or shower with openly gay troops should be handled case-by-case by commanders...." The remainder of the article summarized previously reported background information related to "Don't Ask, Don't Tell," or presented information not derived directly from the draft Report. On that note, the CRWG Deputy Chief of Staff testified that the article was not "very specific" and that "anybody who has kind of been following our work could probably make up something like that and...have a pretty safe guess at being right on this thing."

Tracing the Source of the Leak

Based on the content and chronology of Mr. O'Keefe's columns and e-mails from Mr. Jaffe and others, we established the date that the first source began to speak "at length" with Mr. O'Keefe regarding content from the draft Report to be either late November 8, or early November 9, 2010. Evidence suggested the second source probably became available to the *Washington Post* at about 3pm on November 10, 2010.

We compared portions of *Washington Post's* article with the version of the draft Report distributed on November 4, 2010. All of the relevant facts in the article were contained in the executive summary of the draft Report. According to testimony, Mr. Johnson was the primary author of the executive summary. Additionally, we compared the article with the October 30, 2010, version of the draft Report and found that most of the information published in the

Washington Post article could be derived from the executive summary, with the exception, for instance, of the 40 percent statistic describing the concern in the Marine Corps. (See Appendix F for a comparison of the November 10, 2010, *Washington Post* article; the October 30, 2010, and November 4, 2010, draft Reports; and the final November 30, 2010, Report).

Witnesses testified that the key leaked data point cited in the *Washington Post*, as well as other media outlets and politicians following the improper disclosure, was the survey statistic that "more than 70 percent of respondents...said the effect of repealing the 'Don't Ask, Don't Tell' policy would be positive, mixed or nonexistent." According to one public affairs officer, "This 70 percent figure got everybody's attention." We observed that the 70 percent figure reported in the media, while present in draft Report's executive summary, was derived from just one of the 102 survey questions submitted to Service members. The relevant survey question asked the following:

If 'Don't Ask, Don't Tell' is repealed and you are working with a Service member in your immediate unit who has said he or she is gay or lesbian, how, if at all, would it affect how Service members in your immediate unit work together to get the job done?

The survey question yielded the following responses:

| | |
|-----------------|-------|
| Very Positively | 6.6% |
| Positively | 11.8% |
| Mixed | 32.1% |
| Negatively | 18.7% |
| Very Negatively | 10.9% |
| No Effect | 19.9% |

Events Following the publication of the Washington Post Article

By e-mail dated November 11, 2010, Mr. Wilson proposed a public affairs course of action for Mr. Johnson, Mr. Rangel, and GEN Ham regarding the *Washington Post* article. Among his recommendations, he stated, in part, "I think we do need to address the fact that this has been leaked. We need to do this without implicitly indicating that the leaker's information is either right or wrong."

Mr. Morrell testified that he spoke with Mr. O'Keefe, the lead writer for the *Washington Post* story, on the evening of November 11, 2010, and explained to Mr. O'Keefe, "You are being taken for a ride to some degree here because this [draft Report] is far more nuanced and complex a study than you have reduced it to in your story this morning." Mr. Morrell testified that following "extensive consultation" with the Office of the Secretary of Defense, he challenged reporters "over their conviction that they knew what was in the [draft] Report...at the time everybody was clinging to this little fact, what they thought was a fact from the [draft] Report, which was that 70 percent of the respondents did not think it would be a big deal to

repeal ['Don't Ask, Don't Tell']. By e-mail dated November 11, 2010, Mr. Morrell advised Mr. Wilson that he had spoken with Mr. O'Keefe about the source and the source's motivation:

This is someone who not only had access to all the [draft] report's findings, but also worked on producing it. He/she feels as though the working group did good/hard work, blew away his/her assumptions going in and was worried the report's findings would be discredited by anti-repeal forces. According to O'Keefe, this person ultimately 'wants what [SecDef] Gates wants...for the report to be considered thoughtfully.'

ADM Mullen's senior public affairs officer described a reporter including in his story a detailed description of his source as "unusual." He elaborated,

Typically it is unusual to see a reporter characterize the motivation of the leaker... that is kind of unusual. You do not normally see that.... They do not even usually say it was leaked by a military official or a staffer. They do not usually even identify sort of the cone around which it came from.

GEN Ham replied to Mr. Wilson's proposed course of action by e-mail dated November 11, 2010, stating, in part, "May be better to just deal with the unauthorized disclosure very quickly by initiating an investigation today. We know by name who has copies of the report." He added, "My recommendation is that we not comment in any way about the information in the *Washington Post* article."

By e-mail dated November 11, 2010, Mr. Rangel replied to Mr. Wilson's proposed course of action by directing him to produce a draft public statement for Secretary of Defense review. Mr. Rangel noted, in part, that the draft statement should condemn the leak and announce that the Secretary of Defense has directed an investigation, and that Mr. Morrell should make the statement on behalf of the DoD.

By News Release dated November 12, 2010, Mr. Morrell informed members of the media that, in part, "Secretary Gates is very concerned and extremely disappointed that unnamed sources within the Department of Defense have selectively revealed aspects of the draft findings of the [CRWG], presumably to shape perceptions of the report prior to its release." No remarks were made in the News Release regarding the accuracy of, or oversimplification of issues in the *Washington Post* report, as noted by Mr. Morrell on November 11, 2010.

By memorandum dated November 23, 2010, Maj Gen Biscone, at Mr. Johnson's direction, requested that 67 CRWG members, including the co-chairs, sign affidavits regarding their involvement in the improper disclosure of FOUO information to the *Washington Post*. E-mail evidence established that Maj Gen Biscone's staff limited distribution of affidavits to those who, in their opinion, "more than likely" had access to the draft Report. The affidavit solicited responses to two questions, in part,

In the period between and including October 29, 2010 to November 11, 2010, did you communicate in any fashion with someone associated with the *Washington*

Post, on the subject of "Don't Ask, Don't Tell," the work of the Comprehensive Review Working Group, or the draft report?

[And],

Are you aware of the identity of the anonymous sources(s) for the *Washington Post* story [from November 11, 2010]?

On 64 of the 67 affidavits, the responses were negative to both questions with the exceptions being GEN Ham and Mr. Wilson's designated spokesperson on "Don't Ask, Don't Tell." They both replied that they had communicated with the *Washington Post*, but only in accordance with their official duties as a CRWG Co-Chair and as a Pentagon press officer, respectively. One individual, a U.S. Army colonel, chose not to reply to the affidavit. However, we interviewed the colonel and he testified he did not submit a signed affidavit because he never read the draft Report, and neither communicated with the *Washington Post* nor knew the identity of the anonymous source.

Discussion

We conclude that the evidence accessible to us was insufficient to identify the *Washington Post's* unnamed sources. We identified 101 individuals who had access to the draft Report or its content that was used in the *Washington Post* article and interviewed 96 of them. Each denied under oath that he or she disclosed information to the *Washington Post* or other media sources. We could not establish by a preponderance of evidence that they were the source of the unauthorized disclosure.

Individuals with Access to the Draft Report or its Contents

The 101 individuals who had access to the draft Report or its content included the following:

- 41 "Eyes-Only" recipients identified on the "Access List";
- 14 other "Eyes-Only" recipients;
- 16 CRWG personnel who were added as authorized readers;
- 10 non-CRWG authorized readers;
- 15 individuals not identified as "Eyes-Only" or authorized readers and,
- 5 members of the White House.

We determined that the Secretary of Defense specifically intended for the draft Report to be limited to the 41 "Eyes-Only" recipients identified on the "Access List" attached to the November 4, 2010, memorandum distributed with each draft Report. We found reasonable the addition of 14 "Eyes-Only" recipients which included the Chairman of the Joint Chiefs of Staff, the Deputy Secretary of Defense, and others with an apparent official need to know. From November 4 through 8, 2010, another 16 CRWG personnel were added as authorized readers primarily to assist with the writing, editing, and production aspects of the final Report.

We also found that an additional 10 non-CRWG personnel were granted authorized reader status, but only five of those personnel received Secretary of Defense authorization to read the draft Report. We found that 15 individuals who were not identified as "Eyes-Only" or authorized readers were given access to the draft Report or its contents as early as July 4, 2010, without approval from the Secretary of Defense. Some of the 15 individuals were current CRWG members who had previously been briefed on their respective Service survey data. In other cases, the individuals were not members of the Federal Government and appeared to have no official purpose for access to the draft Report or its content.

We found evidence of confusion among CRWG members and subsequent recipients of the draft Report regarding the Secretary of Defense's original "Eyes-Only" intent. Such confusion ultimately prompted additional direction from the Secretary of Defense on November 5, 2010.

We also note that five White House staff members were briefed on the content of the draft Report on November 9, 2010. However, we did not interview them to determine if they may have passed on the information to anyone else.

Disclosure to the Washington Post

The November 10, 2010, article published by the *Washington Post* stated that they had two sources familiar with "a draft of the report." The primary source had a series of conversations with the *Washington Post* prior to that date during which he stated he had read the report in full. According to the *Washington Post* article, this source declined to state his position on whether to lift the ban, but told the *Washington Post* that he "felt compelled to share the information out of concern that groups opposed to ending the ban would mischaracterize the findings." Most of the information from the draft Report that was published in the *Washington Post* appeared to originate from this source.

The second source cited by the *Washington Post* was characterized as having been briefed on the draft Report but had not read it. That *Washington Post* article stated that this source told them "there are challenges here, and we want the time so we can make the process of implementation as smooth as possible."

Although the *Washington Post* article provided several facts from the draft Report based on these two sources, the only fact attributed to both sources was "More than 70 percent of respondents to a survey sent to active-duty and reserve troops over the summer said the effect of repealing the 'don't ask, don't tell' policy would be positive, mixed or nonexistent."

As previously noted, all of the specific FOUO content published in the *Washington Post* article could have been derived exclusively from the executive summary from the November 4, 2010, draft Report, as illustrated in Appendix F. Notwithstanding Mr. Jaffe's claim that the *Washington Post*'s source "read the 250 page ['Don't Ask, Don't Tell'] report," the draft Report was 227 pages, rather than 250 pages, and was accompanied by a separate 115-page Implementation Plan. More likely than not, if the source had access to the entire 342-page

combined draft Report and Implementation Plan, he/she would have accurately noted the number of pages in order to establish credibility with the *Washington Post*.

Early evidence suggested that the primary source of the information was someone who had a strong emotional attachment to the issue of furthering a repeal of "Don't Ask, Don't Tell," and probably had "assumptions going in" that the CRWG's findings would ultimately reveal that repeal would not be supported by a majority of Service members. In addition, e-mails from the *Washington Post* reporters suggested that the source was not a "disinterested party" and other evidence showed the source carefully disclosed specific survey data to support a pro-repeal agenda. We consider it likely that the primary source disclosed content from the draft Report with the intent to shape a pro-repeal perception of the draft Report prior to its release to gain momentum in support of a legislative change during the "lame duck" session of Congress following the November 2, 2010, elections.

Although we gave this early evidence due consideration, we did not limit our investigation to these possibilities. For example, we received testimony from witnesses who interacted daily with members of the news media and testified they were surprised at the amount of detail Mr. Jaffe and Mr. O'Keefe shared regarding the potential identity and motivation of their primary source. One DoD public affairs official found it unusual for Mr. O'Keefe and Mr. Jaffe to provide details via e-mail communications with Pentagon officials regarding their primary source's access to the draft Report and motivations in a story containing leaked information. As a result, we did not rely on Mr. O'Keefe's and Mr. Jaffe's descriptions of the primary source.

We further observed that the primary source's decision to share FOUO information with Mr. O'Keefe rather than Mr. Jaffe or Mr. Craig Whitlock, the *Washington Post* assigned Pentagon reporters, appeared to signal that the primary source was aware of the distinction in assignments between the *Washington Post* reporters. We determined it more than likely that the primary source followed Mr. O'Keefe's frequent coverage of the "Don't Ask, Don't Tell," issue in his "The Federal Eye" column, and was motivated to reach out to Mr. O'Keefe following Mr. O'Keefe's November 8, 2010, column that intimated repeal was "in jeopardy" because senators were considering removing repeal language from the pending Defense Authorization bill after the November 2, 2010, election results.

Although some witnesses speculated that the unauthorized release of FOUO content to the *Washington Post* more than likely came from a recipient of the draft Report disseminated on November 4, 2010, to designated "Eyes-Only" recipients for review, we found no evidence directly connecting these two events. As highlighted in Appendix F, the content of the *Washington Post* article could have been derived from other versions of the draft Report. Many witnesses told us that they had never before seen more stringent security measures placed on an FOUO document. However, we note that as early as July 4, 2010, content from the draft Report began to be shared with unauthorized individuals, including two people outside the Federal Government and White House staff members. Additionally, some of that content appeared in the media in October 2010 as unauthorized leaks from anonymous sources prior to the *Washington Post* article of November 10, 2010, which contained specific CRWG survey statistics and conclusions.

We considered that the primary source's likely pro-repeal sentiment was further demonstrated by his/her inclusion of the key 70 percent figure in the information provided to the *Washington Post*. We noted that to reach the conclusion that 70 percent of respondents said repeal would have positive, mixed, or no effect on a unit's ability to work together to get a job done, the CRWG combined four survey results categories to derive the 70 percent figure: Very Positively; Positively; Mixed; and No Effect. If Mr. O'Keefe's and Mr. Jaffe's sources had desired to further an anti-repeal bias for the article, he/she could likewise have combined four results categories from that same survey question to conclude that "82 percent of respondents said the effect of repealing the 'Don't Ask, Don't Tell' policy would be negative, mixed or no effect": Very Negatively; Negatively, Mixed, and No Effect. This evidence further supported testimony we obtained from a preponderance of witnesses that the *Washington Post* source(s) had a likely pro-repeal agenda.

Regarding the meeting held at the White House on November 9, 2010, we did not interview the White House staff members Mr. Johnson briefed regarding the draft Report's executive summary. However, we considered it more likely than not that his briefing presented the same information from the executive summary that later appeared in the *Washington Post* on November 10, 2010, as Mr. Johnson was the primary author of the executive summary and he testified that he "briefed them [White House staff] the substance of what the report said...." We did not review non-DoD or White House staff e-mail and phone records. Accordingly, we could not exclude the possibility that persons outside DoD may have disclosed the FOUO information from the draft Report.

V. CONCLUSION

We conclude that sources of the improper disclosure of FOUO information to the *Washington Post* cannot be determined based on a preponderance of available evidence.

VI. RECOMMENDATION

We make no recommendations in this matter.

List of Interviews Conducted

| Organization | Interviews Conducted |
|---|------------------------|
| Office of the Secretary of Defense | 2 |
| The Office of the Chairman and Vice Chairman | 8 |
| Department of the Army | 13 |
| Department of the Navy (less U.S. Marine Corps) | 16 |
| Department of the Air Force | 8 |
| U.S. Marine Corps | 11 |
| U.S. Coast Guard | 5 |
| National Guard Bureau | 6 |
| CRWG | 34 |
| Other | 16 |
| TOTAL | 119¹ |

¹ Three witnesses were interviewed more than once.

List of "Eyes-Only" Recipients

| Org | No. | NAME | Date Delivered | On Original Distribution |
|------------------------|-----|--------------------------------------|----------------|--------------------------|
| Department of the Army | 1 | Mr. John McHugh, Secretary | 4 Nov | Yes |
| | 2 | Dr. Joseph Westphal, Under Secretary | 4 Nov | Yes |
| | 3 | GEN George Casey, CSA | 4 Nov | Yes |
| | 4 | GEN Peter Chiarelli, VCSA | 4 Nov | Yes |
| | 5 | LTG Thomas Bostick, G-1 | 4 Nov | Yes |
| | 6 | SMA Kenneth Preston, SMA | 4 Nov | Yes |
| | 7 | LTG Dana Chipman, TJAG | 4 Nov | Yes |
| | 8 | Mr. Thomas Lamont, Asst Sec, M&RA | 4 Nov | Yes |
| | 9 | Mr. Levator Norsworthy, GC | 4 Nov | Yes |
| Dept of the Navy | 10 | Mr. Ray Mabus, Secretary | 4 Nov | Yes |
| | 11 | Mr. Robert Work, Under Secretary | 4 Nov | Yes |
| | 12 | Mr. Juan Garcia, Asst Sec, M&RA | 4 Nov | Yes |
| | 13 | Mr. Paul Oostburg, GC | 4 Nov | Yes |
| U.S. Navy | 14 | ADM Gary Roughhead, CNO | 4 Nov | Yes |
| | 15 | ADM Jonathan Greenert, VCNO | 4 Nov | Yes |
| | 16 | MCPON Rick West, MCPON | 4 Nov | Yes |
| | 17 | VADM James Houck, TJAG | 4 Nov | Yes |
| | 18 | VADM Mark Ferguson, CNP | 5 Nov | Yes |
| U.S. Marine Corps | 19 | Gen James Amos, CMC | 4 Nov | Yes |
| | 20 | Gen Joseph Dunford, ACMC | 4 Nov | Yes |
| | 21 | SgtMaj Carlton Kent, SMMC | 4 Nov | Yes |
| | 22 | LtGen Richard Zilmer, DC, M&RA | 4 Nov | Yes |
| | 23 | MajGen Vaughn Ary, SJA to CMC | 4 Nov | Yes |
| Dept of the Air Force | 24 | Mr. Michael Donley, Secretary | 4 Nov | Yes |
| | 25 | Mr. Erin Conaton, Under Secretary | 4 Nov | Yes |
| | 26 | Gen Norton Schwartz, CSAF | 4 Nov | Yes |
| | 27 | Gen Carol Chandler, VCSAF | 4 Nov | Yes |
| | 28 | Lt Gen Richard Newton, A-1 | 4 Nov | Yes |
| | 29 | CMSgt James Roy, CMSAF | 4 Nov | Yes |
| | 30 | Lt Gen Richard Harding, TJAG | 4 Nov | Yes |
| | 31 | Mr. Daniel Ginsberg, Asst Sec, M&RA | 4 Nov | Yes |
| | 32 | Mr. Charles Blanchard, GC | 4 Nov | Yes |

List of "Eyes-Only" Recipients

| | | | | |
|-------------------|----|--|---|-----|
| U.S. Coast Guard | 33 | ADM Robert Papp, CCG | 4 Nov | Yes |
| | 34 | VADM Sally Brice-O'Hara, VCCG | 4 Nov | Yes |
| | 35 | MCPOCG Michael Leavitt, MCPOCG | 4 Nov | Yes |
| | 36 | RADM Ronald Hewitt, CG-1 | 4 Nov | Yes |
| | 37 | Mr. Calvin Lederer, JAG | 4 Nov | Yes |
| Natl Guard Bureau | 38 | Gen Craig McKinley, CNGB | 4 Nov | Yes |
| | 39 | CMSgt Denise Jelinski-Hall, Sr Enl Adv | 4 Nov | Yes |
| | 40 | MG Lawrence Ross, J-1 | 4 Nov | Yes |
| | 41 | | 4 Nov | Yes |
| CJCS | 42 | ADM Michael Mullen, CJCS | 4 Nov | No |
| | 43 | Gen James Cartwright, VCJCS | 4 Nov | No |
| USD P&R | 44 | Mr. Clifford Stanley, USD P&R | 4 Nov | No |
| | 45 | Ms. Lynn Simpson, PD USD P&R | 4 Nov | No |
| CRWG | 46 | Mr. Jeh Johnson, Co-Chair, CRWG | 4 Nov & 8 Nov (Received two copies) | No |
| | 47 | GEN Carter Ham, Co-Chair, CRWG | 4 Nov | No |
| | 48 | Maj Gen Greg Biscone, CoS, CRWG | 4 Nov | No |
| | 49 | CRWG | 4 Nov | No |
| | 50 | CRWG | 4 Nov | No |
| | 51 | CRWG | 4 Nov | No |
| | 52 | CRWG | Unknown | No |
| | 53 | | Unknown | No |
| SECDEF | 54 | Mr. Robert Rangel, the Special Assistant to the Secretary of Defense | 4 Nov (Received two copies – provided one to Secretary Gates) | No |
| | 55 | Mr. William Lynn, DepSecDef | 12 Nov | No |

List of 16 Additional CRWG Internal "Authorized Readers" Who Had Access to the draft Report Prior to November 10, 2010

| Position | Date Granted ¹ |
|---|---------------------------|
| Writer | November 4, 2010 |
| Writer / Political Appointee | November 4, 2010 |
| Lead Editor | November 4, 2010 |
| Technical Editor | November 4, 2010 |
| Program Manager | November 4, 2010 |
| Writer | November 4, 2010 |
| Political Appointee | November 4, 2010 |
| Assistant to the General Counsel, Department of the Navy | November 4, 2010 |
| Lead Designer | November 5, 2010 |
| Layout and Design | November 5, 2010 |
| Layout and Design | November 5, 2010 |
| Layout and Design | November 5, 2010 |
| Reviewer | November 8, 2010 |
| Executive Assistant | November 8, 2010 |
| Reviewer ² | November 8, 2010 |
| Political Appointee ³ | November 8, 2010 |

¹ Of these 16 "Authorized Readers," 8 had prior access to various versions of the draft Report through SharePoint.

² This individual read versions of the draft Report as early as November 4, 2010.

³ This individual read the draft Report as early as October 30, 2010.

List of 10 non-CRWG "Authorized Readers" Who Had Access to the draft Report
Prior to November 10, 2010

| Name / Position | Date Granted | Date Read |
|---|--------------|------------------|
| Special Assistant to the CJCS | November 4 | November 17 |
| Deputy Director of the CJCS Action Group | November 4 | November 16 |
| Legal Counsel to the CJCS | November 4 | November 16 |
| LtGen Willie J. Williams, Director, USMC Staff | November 8 | Never |
| Mr. Larry Stubblefield, Deputy Assistant Secretary of the Army for Diversity and Leadership in the M&RA | November 6 | Could not recall |
| Mr. Karl Schneider, Principal Deputy Assistant Secretary of the Army (Manpower and Reserve Affairs) | November 6 | November 7 |
| Mr. Robert D. Hogue, Counsel for the Commandant of the Marine Corps | November 8 | Never |
| Mr. Samuel Retherford, Deputy Assistant Secretary of the Army for Military Personnel | November 6 | November 4 |
| LTG Daniel Bolger, Deputy Chief of Staff, U.S. Army | November 6 | November 7 |
| Mr. Joseph McDade, Assistant Deputy Chief of Staff, Manpower and Personnel, U.S. Army | November 6 | November 7 |

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List of 15 Individuals Not Identified as an "Eyes-Only" or "Authorized Readers"
Who Had Access to the draft Report Prior to November 10, 2010

| Organization | Rank | Notes |
|-------------------------------|---|---|
| Former News Anchor | Civilian | Mr. Johnson read a portion of the draft executive summary to this person on or about July 4, 2010 |
| The Punaro Group | CEO, MajGen Arnold L. Punaro, U.S. Marine Corps, Retired | Mr. Johnson provided access |
| ASD Public Affairs | Mr. Douglas Wilson | Mr. Johnson provided access |
| OASD-PA Defense Press Office | DoD Civilian | Mr. Johnson provided access |
| U.S. Navy | Commander | Received two copies. One from Mr. Paul Oostburg & Mr. Juan Garcia |
| U.S. Navy | Captain | Copy made by Executive Asst to Mr. Robert Work |
| U.S. Navy | USMC Colonel | Made personal copies designated for Mr. Work ¹ |
| U.S. Navy | Mr. Thomas P. Oppel, Special Assistant to the Secretary of the Navy | Secretary Ray Mabus provided access |
| U.S. Marine Corps | Colonel | Copy intended for [REDACTED] |
| U.S. Marine Corps | Lieutenant Colonel | Copy intended for [REDACTED] |
| U.S. Marine Corps | DoD Civilian | LtGen Richard Zilmer provided access |
| CRWG | DoD Civilian | Unassigned Copy |
| DoD Office of General Counsel | Mr. Paul S. Koffsky, Deputy General Counsel for Personnel and Health Policy, Office of General Counsel, DoD | Mr. Johnson provided access |
| U.S. Army | Political Appointee | Copy intended for Mr. Thomas Lamont |
| DoD Office of General Counsel | Colonel | Mr. Johnson provided access |

¹ The colonel testified that although he made copies of the executive summary for himself and his naval counterpart, he (the colonel) never read it. Upon learning copies were made, Mr. Work testified that he directed the copies be destroyed.

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Comparison of “Don’t Ask, Don’t Tell” Reports and Washington Post
 All report extracts taken from the Executive Summary Unless Otherwise Noted
 Similarities between Report and *Washington Post* are highlighted in yellow.

The Washington Post,
Nov 11, 2010, in part:

“military can lift the ban... with only minimal and isolated incidents of risk to the current war efforts”

[Lead paragraph] “A Pentagon study group has concluded that the military can lift the ban on gays serving openly in uniform with only minimal and isolated incidents of risk to the current war efforts, according to two people familiar with a draft of the report, which is due to President Obama on Dec. 1.”

“70 percent” and “positive, mixed or nonexistent”

“More than 70 percent of respondents to a survey sent to active-duty and reserve troops over the summer said the effect of repealing the ‘don’t ask, don’t tell’ policy would be positive, mixed or nonexistent, said two sources familiar with the document. The survey led the report’s authors to conclude that objections to openly gay colleagues would drop once troops were able to live and serve alongside them.

Preview draft DADT report,
Oct 30, 2010, in part

“...[O]ur assessment is that a repeal ... may, in the short term, bring about some isolated incidents of disruption in the long term, our military will adjust and accommodate this change... the results of the Service member survey reveal a widespread attitude among a substantial majority of our people that repeal... will have no negative impact on their ability to conduct their military mission.”

“... when asked about the affect repeal will have on their unit’s ability to ‘work together to get the job done,’ 70.4% of our people responded that repeal would have mixed, positive, or no effects.”

Draft DADT report,
Nov 4, 2010, in part:

“...[O]ur assessment is that a repeal . . . may, in the short term, bring about some limited disruption at local levels. We do not anticipate those disruptions to be widespread or long-lasting . . . the results of the Service member survey reveal a widespread attitude among a solid majority of Service members that repeal . . . will have no negative impact on their ability to conduct their military mission.”

“The results of the survey are best represented by the answer to two questions....second, when asked about the effect repeal will have on their unit’s ability to ‘work together to get the job done,’ 70.4% responded that repeal would have a mixed, positive, or no effects.”

Final DADT version,
Nov 30, 2010, in part:

“...[O]ur assessment is that...the risk of repeal to military effectiveness is low. We conclude that, while repeal of Don’t Ask, Don’t Tell will likely, in the short term, bring some limited and isolated disruption to unit cohesion and retention, we do not believe this disruption will be widespread or long-lasting....The results of the Service member survey reveal a widespread attitude among a solid majority of Service members that repeal of Don’t Ask, Don’t Tell will not have a negative impact on their ability to conduct their military mission.”

The results of the survey are best represented by the answers to three questions:
 When asked about how having a Service member in their immediate unit who said he or she is gay would affect the unit’s ability to ‘work together to get the job done,’ 70% of Service members predicted it would have a positive, mixed, or no effect.

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Comparison of “Don’t Ask, Don’t Tell” Reports and Washington Post
 All DADT report extracts taken from the Executive Summary Unless Otherwise Noted
 Similarities between Report and *Washington Post* are highlighted in yellow.

The Washington Post,
Nov 11, 2010, in part:

Preview draft DADT report,
Oct 30, 2010, in part

Draft DADT report,
Nov 4, 2010, in part:

Final DADT version,
Nov 30, 2010, in part:

“40 percent”

“...the survey asked if having an openly gay person in a unit would have an effect in an intense combat situation....About 40 percent of the Marine Corps is concerned about lifting the ban, according to one of the people familiar with the report.”

“To be sure, these survey results reveal a significant minority -- in the range of 20% to 30% -- who expressed in some form and to some degree negative views or concerns about a repeal of Don’t Ask, Don’t Tell.” (Reference to the 40% in the Marine Corps was absent in this version but could be found in survey data).

“To be sure, these survey results reveal a significant minority – in the range of 20% to 30%, and around 40% in the Marine Corps – who expressed in some form and to some degree negative views or concerns about the impact of a repeal of Don’t Ask, Don’t Tell.”

“To be sure, these survey results reveal a significant minority – around 30% overall (and 40 – 60% in the Marine Corps and in various combat arms specialties) – who predicted in some form and to some degree negative views or concerns about the impact of a repeal of Don’t Ask, Don’t Tell.”

“end to the military ban on sodomy”

“Among several recommendations, the report urges an end to the military ban on sodomy between consenting adults regardless of what Congress or the federal courts might do about ‘don’t ask, don’t tell,’ the source said.”

“We support the pre-existing proposals to repeal Article 125 of the Uniform Code of Military Justice and remove consensual sodomy as a criminal offense. This change in law is warranted irrespective of whether Don’t Ask, Don’t Tell is repealed...”

“We support the pre-existing proposals to repeal Article 125 of the Uniform Code of Military Justice and remove consensual sodomy as a criminal offense. This change in law is warranted irrespective of whether Don’t Ask, Don’t Tell is repealed...”

“We support the pre-existing proposals to repeal Article 125 of the Uniform Code of Military Justice and remove private consensual sodomy between adults as a criminal offense. This change in law is warranted irrespective of whether Don’t Ask, Don’t Tell is repealed...”

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Comparison of "Don't Ask, Don't Tell" Reports and Washington Post
 All DADT report extracts taken from the Executive Summary Unless Otherwise Noted
 Similarities between Report and *Washington Post* are highlighted in yellow.

The Washington Post,
Nov 11, 2010, in part:

Preview draft DADT report,
Oct 30, 2010, in part

Draft DADT report,
Nov 4, 2010, in part:

Final DADT version,
Nov 30, 2010, in part:

"room or shower...handled case-by-case"

"Objections by troops who do not want to room or shower with openly gay troops should be handled case-by-case by commanders and should be scrutinized, the source said."

"military must abide by...Defense of Marriage Act"

"The report recommends few, if any, changes to policy covering military housing and benefits, because the military must abide by the federal Defense of Marriage Act, which does not recognize same-sex marriage."

"...commanders should retain the authority to alter berthing or billeting assignments on an individualized, case-by-case basis, in the interest of morale, good order and discipline."
 (Not in executive summary, but located on p. 117)

"A reality is that, given current law, particularly the Defense of Marriage Act, there are a number of those benefits that simply cannot legally be extended to gay and lesbian Service members and their same-sex partners, even if they were lawfully married..."

"Commanders would retain the authority they currently have to alter berthing or billeting assignments or accommodate privacy concerns on an individualized, case-by-case basis, in the interests of morale, good order and discipline..."

"A reality is that, given current law, particularly the Defense of Marriage Act, there are a number of those benefits that simply cannot legally be extended to gay and lesbian Service members and their same-sex partners, even if they were lawfully married..."

"At the same time, commanders would retain the authority they currently have to alter berthing or billeting assignment or accommodate privacy concerns on an individualized, case-by-case basis, in the interest of morale, good order and discipline..."

"A reality is that, given current law, particularly the Defense of Marriage Act, there are a number of those benefits that cannot legally be extended to gay and lesbian Service members and their same-sex partners, even if they are lawfully married in a state that permits same-sex marriage."

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